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Loan & Trust Company. Judgment for plaintiff, and defendant brings error. Affirmed.

M. L. Walton, of Woodstock, and *John W. Rust*, of Fairfax, for plaintiff in error.

Moore, Keith, McCandlish & Hall, of Fairfax, for defendant in error.

TOWN OF VIRGINIA BEACH *v.* OGLE.

March 15, 1917.

[91 S. E. 747.]

Municipal Corporations (§ 821 (2)*)—Jury Question—Existence of Street.—Whether a municipal corporation accepted part of a street so as to be liable for defects in it was made a jury question, where Acts 1906, c. 76, incorporating the town, referred to a map prepared by its council pursuant to Code 1904, § 1014, and the town had done some repairing on such portion of the street.

[Ed. Note.—For other cases, see **Municipal Corporations**, Cent. Dig. § 1746.* 4 Va.-W. Va. Enc. Dig. 355.]

Sims, J., dissenting.

Error to Circuit Court, Princess Anne County.

Action by *Lilly M. Ogle* against Town of Virginia Beach. Judgment for plaintiff, and defendant brings error. Affirmed.

A. Johnston Ackiss, of Norfolk, for plaintiff in error.

J. Edward Cole, of Norfolk, for defendant in error.

TYLER, Clerk of Circuit Court, *v.* GARRISON.

March 20, 1917.

[91 S. E. 749.]

Appeal and Error (§ 389 (1)*)—Statute—Appellate Proceedings.—Code 1904, § 3538, declaring that a poor person may be allowed by a court to sue or defend a suit without paying fees or costs, whereupon he shall have, from any counsel whom the court may assign him, and from all officers, all needful services and process, without any fees, does not apply to appellate proceedings.

[Ed. Note.—For other cases, see **Appeal and Error**, Cent. Dig. §§ 2072, 2073.* 1 Va.-W. Va. Enc. Dig. 606.]

Error to Circuit Court, Prince William County.

Action between *W. W. Garrison* and *George G. Tyler*, Clerk

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

of the Circuit Court of Prince William County. There was judgment for the former, and the latter brings error. Reversed.

R. A. Hutchison, of Manasses, for plaintiff in error.

LAWSON *v.* HOBBS.

March 18, 1917.

[91 S. E. 750.]

1. Evidence (§ 441 (9)*)—Parol Evidence—Varying Contract of Sale—Place of Delivery.—Where a written contract of sale specified delivery of engine to be “f. o. b. Suffolk” without qualification, parol evidence showing that it was to be delivered at defendant’s place of business at Norfolk was properly rejected, because varying the plain terms of the written instrument.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 1787.* 10 Va.-W. Va. Enc. Dig. 670.]

2. Sales (§ 79, 201 (4)*)—Construction of Contract—Place of Delivery—“Free on Board”—“F. O. B.”—A contract for sale “free on board” or “f. o. b.” a certain place without qualification means that goods are to be placed on board cars for shipment without act or expense of buyer, and that title then passes, and the property is then wholly at the buyer’s risk, and such words are not open to construction.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 214, 216, 535, 536.* 15 Va.-W. Va. Enc. Dig. 409.]

For other definitions, see Words and Phrases, First and Second Series, Free on Board; f. o. b.]

3. Evidence (§ 442 (6)*)—Parol Evidence—Explaining Contract of Sale—Place of Delivery.—Parol Evidence showing that more specific shipping directions were to be given where contract of sale merely specified “f. o. b.” is admissible, where the point is material, not to contradict the contract, but as consistent with it.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1877, 1886, 1887.* 10 Va.-W. Va. Enc. Dig. 670.]

4. Witnesses (§ 275 (2)*)—Cross-examination — Scope—Reason for Repudiating Contract.—Where defendant proved that he had been obliged to purchase another engine on account of delayed delivery of one purchased of plaintiff, the plaintiff could inquire on cross-examination what he had paid for it, to show a motive for repudiating his contract with plaintiff and to show the entire transaction.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. § 968* 13 Va.-W. Va. Enc. Dig. 957.]

5. Sales (§ 81 (3)*)—Time of Shipment—“At Once.”—Where a

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